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## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

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<b>2001 Senate Bill 360</b>	<b>Senate Substitute Amendment 1 and Senate Amendment 1 to Senate Substitute Amendment 1</b>
Memo published: February 18, 2002      Contact: Anne Sappenfield, Senior Staff Attorney (267-9485)	

### **INVESTIGATIONS OF RETAILERS THAT SELL CIGARETTES OR TOBACCO PRODUCTS**

Under current law, the Department of Health and Family Services (DHFS) may contract with local health departments, state agencies, or state and local law enforcement agencies, as agents of DHFS, to conduct unannounced investigations of retail outlets where cigarettes or tobacco products are sold to survey overall levels of compliance with the prohibitions against selling cigarettes or tobacco products to minors.

Senate Bill 360 permits a local health department, a state agency, or a state or local law enforcement agency to conduct unannounced investigations of retail outlets to enforce prohibitions against tobacco sales to minors without first having a contract to do so with DHFS.

Under the bill, no retailer may be subject to unannounced investigations more than twice annually unless the retailer is found to have violated the prohibition against selling cigarettes or tobacco products to minors during an investigation. Current law permits more than two unannounced investigations only if the retailer is found to have violated the prohibition against sales to minors during each investigation. Under the substitute amendment, no retailer may be subjected to an unannounced investigation more than twice annually unless the retailer is found to have violated prohibitions against selling cigarettes or tobacco products to minors during the most recent investigation.

Current law contains several requirements relating to how an unannounced investigation may be conducted. The bill does not affect these requirements. Under the substitute amendment, a person who contracts with DHFS, a local health department, a state agency or a law enforcement agency to conduct unannounced investigations must agree to train all individuals to conduct investigations in accordance with the requirements under current law. In addition, the person must agree to suspend from conducting any further investigations for not less than six months an individual who fails to meet the requirements for conducting investigations.

Also under current law, DHFS must hold a hearing under ch. 227, Stats. (Administrative Procedure), if any interested person appeals to DHFS alleging that the person making an investigation of the appellant has a financial interest in a regulated cigarette and tobacco product retailer, a tobacco vending machine operator, a tobacco vending machine premises or a tobacco vending machine that may interfere with his or her ability to properly conduct the investigation.

Senate Amendment 1 to the substitute amendment to the bill amends this provision of current law. Under the amendment, a person conducting an investigation may not have a financial interest in a regulated cigarette and tobacco product retailer, a tobacco vending machine operator, a tobacco vending machine premises or a tobacco vending machine that may interfere with his or her ability to properly conduct the investigation. A person who is investigated may request the local health department or local law enforcement agency that contracted for the investigation to conduct a review under ch. 68, Stats. (Municipal Administrative Procedure), to determine whether the person conducting the investigation is in compliance with this provision or, if applicable, may request the state agency or state law enforcement agency that contracted for the investigation to conduct a contested case hearing under ch. 227, Stats., to make that determination. Under the amendment, the results of an investigation that is conducted by a person who is not in compliance with this provision may not be used to prosecute a violation of the prohibition against selling cigarettes or tobacco products to minors or a local ordinance containing such a prohibition.

### **TRAINING OF INDIVIDUALS WHO SELL TOBACCO PRODUCTS**

The substitute amendment requires retailers to provide training on compliance with current law relating to selling cigarettes or tobacco products to minors and the penalties for violating current law at the time that a retailer hires or contracts with an agent, employee, or independent contractor (hereinafter, "employee") whose duties will include the sale of cigarettes or tobacco products. DHFS must make available a training program developed or approved by DHFS that provides the required training. A retailer may also provide an alternate training program that is approved by DHFS. Upon completion of the training, the retailer and the employee must sign a form provided by DHFS verifying that the training has been completed. The retailer must keep this form in the personnel file of the employee.

The training requirement does not apply to an agent, employee, or independent contractor who has received the training as part of a responsible beverage server training course or a comparable training course.

Under the substitute amendment, if an employee who has not received the required training commits a violation of the prohibition against selling cigarettes or tobacco products to minors, a citation may be issued only to the retailer that hired the employee. If an employee who has received the training commits a violation, both the retailer and the employee may be issued a citation.

### **PROHIBITION AGAINST MINORS POSSESSING CIGARETTES OR TOBACCO PRODUCTS**

Under current law, a minor may not falsely represent his or her age for the purpose of receiving any cigarette or tobacco product and may not purchase, attempt to purchase, or possess any cigarette or tobacco product.

The substitute amendment permits a county, town, village, or city to enact an ordinance that strictly conforms to the prohibition under current law.

The Senate Committee on Human Services and Aging unanimously recommended adoption of the substitute amendment and recommended passage of the bill, as amended, on a vote of Ayes, 5; Noes, 2.

AS:jal:ksm;tlu